

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

U.S. ETHERNET INNOVATIONS, LLC.

Plaintiff,

V.

ACER, INC.,
ACER AMERICA CORP.,
APPLE, INC.,
ASUS COMPUTER INTERNATIONAL,
ASUSTEK COMPUTER INC.,
DELL INC.,
FUJITSU LTD.,
FUJITSU AMERICA, INC.,
GATEWAY, INC.,
HEWLETT PACKARD CO.,
ASUS DEVELOPMENT CO. LLC,
SONY CORP.,
SONY CORP. OF AMERICA,
SONY ELECTRONICS INC.,
TOSHIBA CORP.,
TOSHIBA AMERICA, INC., and
TOSHIBA AMERICA
INFORMATION SYTEMS. INC.

Defendants.

CIVIL ACTION NO. 6:09-cv-448

JURY TRIAL DEMANDED

**ANSWER AND COUNTERCLAIMS OF
ASUS COMPUTER INTERNATIONAL AND ASUSTEK COMPUTER INC.
(COLLECTIVELY “ASUS”)
TO COMPLAINT FOR PATENT INFRINGEMENT OF
U.S. ETHERNET INNOVATIONS, LLC (“USEI”)**

ASUS answers the allegations made in USEI’s Complaint for Patent Infringement (the “Complaint”) as follows:

NATURE OF THE ACTION

1. ASUS lacks sufficient information to admit or deny the allegation that USEI owns United States Patent Nos. 5,307,459 (the “459 patent”), 5,434,872 (the “872 patent”), 5,732,094 (the “094 patent”) and/or 5,299,313 (the “313 patent”) (collectively, patents-in-suit), and for that reason denies the same.

2. ASUS denies the allegations in Paragraph 2 to the extent that they are directed at ASUS. ASUS otherwise lacks sufficient information to admit or deny the allegations in Paragraph 2, and for that reason denies the same.

3. ASUS admits that USEI seeks damages for each Defendant’s alleged infringement of the patents-in-suit, but ASUS denies liability for infringement of the patents-in-suit and that USEI is entitled to damages from ASUS.

PARTIES

4. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 4, and for that reason denies the same.

5. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 5, and for that reason denies the same.

6. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 6, and for that reason denies the same.

7. ASUS admits that ASUSTeK Computer Inc. (“ASUSTeK”) is a Taiwanese company with a principal place of business at No. 15, Li-Te Road, Peitou District, Taipei 112, Taiwan R.O.C., and that ASUS Computer International (“ACI”) is a wholly owned subsidiary of ASUSTeK and a California company with a principal place of business at 800 Corporate Way, Fremont, California 94539.

8. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 8, and for that reason denies the same.

9. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 9, and for that reason denies the same.

10. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 10, and for that reason denies the same.

11. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 11, and for that reason denies the same.

12. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 12, and for that reason denies the same.

JURISDICTION AND VENUE

13. ASUS admits that all of the claims asserted in the Complaint arise under 35 U.S.C. § 101, *et seq.*

14. ASUS admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

15. To the extent the allegations in paragraph 15 relate to ASUS, ASUS admits that venue is proper in this Court, but ASUS denies that this District is the most convenient forum for this case. ASUS denies all other allegations in paragraph 15 to the extent such allegations relate to ASUS. To the extent the allegations in paragraph 15 relate to the other Defendants in this case, ASUS lacks sufficient information to admit or deny the allegations, and for that reason denies the same.

16. For purposes of this case, ASUS admits that it is subject to personal jurisdiction in Texas. ASUS otherwise lacks sufficient information to admit or deny the allegations set forth in

Paragraph 16, and for that reason denies the same.

PATENTS-IN-SUIT

17. On information and belief, ASUS admits that a copy of the '459 patent is attached to USEI's Complaint as Exhibit A. ASUS also admits that, according to the cover page of the '459 patent attached to USEI's Complaint as Exhibit A, it is entitled "Network Adapter with Host Indication Optimization" and issued on April 26, 1994. ASUS further admits that, according to the cover page of the '459 patent attached to USEI's Complaint as Exhibit A, 3Com Corporation is listed as the assignee, and Brian Peterson, W. Paul Sherer, David R. Brown and Lai-Chin Lo listed as the inventors. ASUS denies all remaining allegations in Paragraph 17 of USEI's Complaint.

18. On information and belief, ASUS admits that a copy of the '872 patent is attached to USEI's Complaint as Exhibit B. ASUS also admits that, according to the cover page of the '872 patent attached to USEI's Complaint as Exhibit B, it is entitled "Apparatus for Automatic Initiation of Data Transmission" and issued on July 18, 1995. ASUS further admits that, according to the cover page of the '872 patent attached to USEI's Complaint as Exhibit B, 3Com Corporation is listed as the assignee, and Brian Peterson, W. Paul Sherer and David R. Brown listed as inventors. ASUS denies all remaining allegations in Paragraph 18 of USEI's Complaint.

19. On information and belief, ASUS admits that a copy of the '094 patent is attached to USEI's Complaint as Exhibit C. ASUS also admits that, according to the cover page of the '094 patent attached to USEI's Complaint as Exhibit C, it is entitled "Method for Automatic Initiation of Data Transmission" and issued on March 24, 1998. ASUS further admits that, according to the cover page of the '094 patent attached to USEI's Complaint as Exhibit C, 3Com

Corporation is listed as the assignee, and Brian Peterson, W. Paul Sherer and David R. Brown listed as inventors. ASUS denies all remaining allegations in Paragraph 19 of USEI's Complaint.

20. On information and belief, ASUS admits that a copy of the '313 patent is attached to USEI's Complaint as Exhibit D. ASUS also admits that, according to the cover page of the '313 patent attached to USEI's Complaint as Exhibit D, it is entitled "Network Interface with Host Independent Buffer Management" and issued on March 29, 1994. ASUS further admits that, according to the cover page of the '313 patent attached to USEI's Complaint as Exhibit D, 3Com Corporation is listed as the assignee, and Brian Peterson, W. Paul Sherer, David R. Brown, and Lai-Chin Lo listed as inventors. ASUS denies all remaining allegations in Paragraph 20 of USEI's Complaint.

21. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 21, and for that reason denies the same.

ACCUSED PRODUCTS

22. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 22, and for that reason denies the same.

23. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 23, and for that reason denies the same.

24. ASUSTeK admits that it makes, uses, offers for sale and/or sells P4T533-C Motherboard, P4PE Motherboard, AP17 10-E1 Server and/or Rampage II Extreme, and ACI admits that it imports, uses, offers for sale and/or sells P4T533-C Motherboard, P4PE Motherboard, AP17 10-E1 Server and/or Rampage II Extreme. ASUS denies that P4T533-C Motherboard, P4PE Motherboard, AP17 10-E1 Server, Rampage II Extreme and/or any other

ASUS products embody any claims of the patents-in-suit. ASUS further denies all remaining allegations in Paragraph 24 of USEI's Complaint.

25. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 25, and for that reason denies the same.

26. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 26, and for that reason denies the same.

27. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 27, and for that reason denies the same.

28. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 28, and for that reason denies the same.

29. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 29, and for that reason denies the same.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 5,307,459

30. ASUS restates and incorporates by reference its responses to the allegations in paragraphs 1-29 of USEI's Complaint.

31. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 31, and for that reason denies the same.

32. ASUS denies all allegations in Paragraph 32 of USEI's Complaint.

33. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 33, and for that reason denies the same.

34. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 34, and for that reason denies the same.

35. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 35, and for that reason denies the same.

36. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 36, and for that reason denies the same.

37. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 37, and for that reason denies the same.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 5,434,872

38. ASUS restates and incorporates by reference its responses to the allegations in paragraphs 1-29 of USEI's Complaint.

39. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 39, and for that reason denies the same.

40. ASUS denies all allegations in Paragraph 40 of USEI's Complaint.

41. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 41, and for that reason denies the same.

42. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 42, and for that reason denies the same.

43. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 43, and for that reason denies the same.

44. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 44, and for that reason denies the same.

45. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 45, and for that reason denies the same.

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 5,732,094

46. ASUS restates and incorporates by reference its responses to the allegations in paragraphs 1-29 of the Complaint.

47. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 47, and for that reason denies the same.

48. ASUS denies all allegations in Paragraph 48 of USEI's Complaint.

49. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 49, and for that reason denies the same.

50. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 50, and for that reason denies the same.

51. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 51, and for that reason denies the same.

52. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 52, and for that reason denies the same.

53. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 53, and for that reason denies the same.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 5,299,313

54. ASUS restates and incorporates by reference its responses to the allegations in paragraphs 1-29 of the Complaint.

55. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 55, and for that reason denies the same.

56. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 56, and for that reason denies the same.

57. ASUS denies all allegations in Paragraph 57 of USEI's Complaint.

58. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 58, and for that reason denies the same.

59. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 59, and for that reason denies the same.

60. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 60, and for that reason denies the same.

61. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 61, and for that reason denies the same.

62. ASUS lacks sufficient information to admit or deny the allegations set forth in Paragraph 62, and for that reason denies the same.

PRAYER FOR RELIEF

63. ASUS opposes any of the relief sought by USEI in its Prayer for Relief or any other relief against ASUS.

AFFIRMATIVE DEFENSES

ASUS incorporates by reference the foregoing paragraphs in their entirety and asserts the following Affirmative Defenses. ASUS reserves the right to amend its answer with additional defenses as further information becomes available.

FIRST AFFIRMATIVE DEFENSE **(No Infringement)**

1. ASUS does not infringe and has not infringed any valid and enforceable claim of

the '459, '872, '094 or '313 patent.

2. ASUS does not induce or contribute to and has not induced or contributed to infringement of any valid and enforceable claim of the '459, '872, '094 or '313 patent.

SECOND AFFIRMATIVE DEFENSE
(Invalidity)

3. Each claim of the '459, '872, '094 and '313 patents is invalid for failing to satisfy the conditions for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103 and 112.

THIRD AFFIRMATIVE DEFENSE
(Laches)

4. USEI's claims for relief are barred in whole or in part by laches.

FOURTH AFFIRMATIVE OR OTHER DEFENSE
(Estoppel)

5. USEI's claims are barred in whole or in part by estoppel.

FIFTH AFFIRMATIVE DEFENSE
(License)

6. Some or all of ASUS's products have been licensed.

SIXTH AFFIRMATIVE DEFENSE
(Exhaustion)

7. USEI's claims are barred in whole or in part by patent exhaustion.

SEVENTH AFFIRMATIVE DEFENSE
(No Fees, Costs or Damages)

8. USEI has failed to plead and/or meet the requirements under 35 U.S.C. §§ 284-288, and has otherwise failed to show that it is entitled to any fees, costs or damages.

JURY DEMAND

ASUS also demands a jury trial on all issues so triable.

**COUNTERCLAIMS OF ASUS COMPUTER INTERNATIONAL AND ASUSTEK
COMPUTER INC. (COLLECTIVELY “ASUS”) AGAINST U.S. ETHERNET
INNOVATIONS, LLC (“USEI”)**

ASUS complains of counter-defendant USEI and alleges as follows:

THE PARTIES

1. ASUSTeK Computer Inc. (“ASUSTeK”) is a Taiwanese company with a principal place of business at No. 15, Li-Te Road, Peitou District, Taipei 112, Taiwan R.O.C. ASUS Computer International (“ACI”) is a wholly owned subsidiary of ASUSTeK and a California company with a principal place of business at 800 Corporate Way, Fremont, California 94539.

2. On information and belief based upon USEI’s Complaint, USEI is a Texas limited liability company having a principal place of business in Tyler, Texas.

JURISDICTION AND VENUE

3. These counterclaims arise under the Declaratory Judgment Act, 28 U.S.C. §§2201 et seq., and the patent laws, 35 U.S.C. § 101 et seq. This Court has subject matter jurisdiction over the counterclaims under 28 U.S.C. §§ 1331 and 1338(a). This Court has further subject matter jurisdiction under 28 U.S.C. §§ 1332 and 1367(a).

4. This court has personal jurisdiction over USEI because, on information and belief, USEI’s principal place of business is in this District and because USEI has filed suit against ASUS in this District and hence has purposefully availed itself in this District.

5. Venue on these counterclaims is proper in this District under 28 U.S.C. § 1391(b) because USEI alleges that its principal place of business is located in this District.

FIRST COUNTERCLAIM

DECLARATION OF NO INFRINGEMENT

6. An actual controversy has arisen and now exists between ASUS and USEI as to the infringement of U.S. Patent Nos. 5,307,459 (the “’459 patent”), 5,434,872 (the “’872 patent”), 5,732,094 (the “’094 patent”) and 5,299,313 (the “’313 patent”) because of the patent action filed by USEI against ASUS.

7. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., ASUS seeks the declaration of the Court that ASUS does not infringe and has not infringed any valid and enforceable claim of the ’459, ’872, ’094 or ’313 patent.

8. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., ASUS seeks the declaration of the Court that ASUS does not induce or contribute to and has not induced or contributed to infringement of any valid and enforceable claim of the ’459, ’872, ’094 or ’313 patent.

SECOND COUNTERCLAIM

DECLARATION OF INVALIDITY

9. An actual controversy has arisen and now exists between ASUS and USEI as to the validity of the ’459, ’872, ’094 and ’313 patent because of the patent action filed by USEI against ASUS.

10. ASUS seeks the declaration of the Court that each claim of the ’459, ’872, ’094 and ’313 patents is invalid for failing to satisfy the conditions for patentability set forth in Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103 and 112.

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PRAYER FOR RELIEF

ASUS respectfully requests that this Court enter a judgment against USEI as follows:

- A. ASUS does not infringe, has not infringed, does not induce or contribute to the infringement of, and has not induced or contributed to the infringement of any valid and enforceable claim of U.S. Patent No. 5,307,459;
- B. ASUS does not infringe, has not infringed, does not induce or contribute to the infringement of, and has not induced or contributed to the infringement of any valid and enforceable claim of U.S. Patent No. 5,434,872;
- C. ASUS does not infringe, has not infringed, does not induce or contribute to the infringement of, and has not induced or contributed to the infringement of any valid and enforceable claim of U.S. Patent No. 5,732,094;
- D. ASUS does not infringe, has not infringed, does not induce or contribute to the infringement of, and has not induced or contributed to the infringement of any valid and enforceable claim of U.S. Patent No. 5,299,313;
- H. Each claim of U.S. Patent No. 5,307,459 is invalid;
- F. Each claim of U.S. Patent No. 5,434,872 is invalid;
- G. Each claim of U.S. Patent No. 5,732,094 is invalid;
- H. Each claim of U.S. Patent No. 5,299,313 is invalid;
- I. USEI's claims against ASUS are dismissed in their entirety with prejudice;
- J. This case is exceptional under 35 U.S.C. § 285, and ASUS is entitled to recover its costs and reasonable attorneys' fees; and
- K. ASUS is entitled to whatever further relief the Court may deem just and proper.

JURY DEMAND

ASUS hereby demands a jury trial on all issues so triable.

Respectfully submitted,

/s/ Kyle Chen

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**ATTORNEYS FOR DEFENDANTS
ASUS COMPUTER INTERNATIONAL AND
ASUSTEK COMPUTER INC.**

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on the 18th day of January, 2010. As such, this document was served upon all counsel of record deemed to have consented to electronic service via the Court's CM/ECF system. Local Rule CV-(5)(a)(3).

/s/ Kyle Chen